

IN THE HIGH COURT OF JHARKHAND AT RANCHI
M. A. No.311 of 2016

The Oriental Insurance Company Ltd., office at Hindustan Building, Bistupur, P.O. & P.S. Bistupur, Jamshedpur, District East Singhbhum, represented through its Sr. Divisional Manager, The Oriental Insurance Company Ltd., Ranchi D.O.-I, Ranchi, Tiwary Enclave, Circular Road, P.O. & P.S. Lalpur, District Ranchi, Jharkhand..**Opposite Party No.4/ Appellant**

Versus

1. Rakesh Dubey, son of Sri Harindra Dubey, resident of Naya Bazar, P.O. & P.S. Jugsalai, Jamshedpur, District Singhbhum (East)

..... **Applicant/ Respondent**

2. Mr. Sayed Mamboob Raja, son of Syed Arli Raja, resident of near Star Talkies, Burma Mines, P.O. & P.S. Burma Mines, Jamshedpur, District Singhbhum East (Owner of Tanker) **Opposite Party No.1/ Respondent**

3. Reliance General Insurance office at Gayatri Enclave, R. Road, Bistupur, P.O. & P.S. Bistupur, Jamshedpur and Regional Office, Reliance General Insurance, Himalaya House, 8th Floor, 38B Jawaharlal Nehru Road, P.O. & P.S. Kolkata

..... **Opposite Party No.2/ Respondent**

4. Amarnath Pathak, son of Brahdev Pathak, resident of Station Road, Jugsalai, P.O. & P.S. Jugsalai, Loknath Complex, near L.I.C. Building, Jamshedpur

..... **Opposite Party No.3/ Respondent**

CORAM : HON'BLE MR. JUSTICE SUBHASH CHAND

For the Appellant : Mr. Ganesh C. Jha, Advocate

For the Respondents : Ms. Swati Shalini, Advocate

Mr. Amaresh Kumar, Advocate

Mr. Preveen Akhauri, SC Mines-I

C.A.V. on: 06/02/2024

Pronounced on:29/02/2024

1. The instant Miscellaneous Appeal has been directed against the judgment/ award dated 09.02.2016 passed by the learned District Judge-III-cum- M.A.C.T., Jamshedpur in Compensation Case No.184 of 2011, whereby the learned Tribunal had awarded the compensation amount of Rs.6,60,800/- along with interest @ 8% per annum from the date of filing of the claim application till its realization within 30 days from the judgment/ award after deducting amount paid under Section 140 of the Motor Vehicle Act, 1988.

2. The appellant/ Oriental Insurance Company has preferred this appeal aggrieved from the impugned award on the ground that the learned Tribunal has fastened the liability upon the appellant-Oriental Insurance Company to pay the whole amount of compensation, who is insurer of the Tata 407 mini truck bearing registration No.JH05Q-2409; while as per the averments made in the claim petition the said accident was caused by the tanker/tractor bearing registration No.BR18-9139, which was insured by the Reliance General Insurance Company, who was also party to the claim petition. The impugned award passed by the learned Tribunal is not based on the evidence on record rather is based on the perverse findings. The eyewitness of the said accident is the claimant-injured himself, who was driving Tata-407 mini truck bearing registration No.JH05Q-2409, which was insured by the appellant-Oriental Insurance Company Limited. The FIR of the said accident was also lodged by the claimant-injured himself and the Investigating Officer after having concluded the investigation filed charge-sheet against the driver of the tanker/ tractor bearing registration No.BR18-9139. The learned Tribunal has not taken into consideration the documentary evidence and testimony of the injured eyewitness, who is the claimant himself. The FIR and the charge-sheet was also against the driver of the tanker/ truck bearing registration No.BR18-9139.

3. The brief facts culled out are that the claimant/ injured Rakesh Dubey has filed the claim petition under Section 166 of the Motor Vehicle Act, 1988 before the learned Tribunal with these averments that on 23.11.2008 while he was driving Tata-407 mini truck bearing registration No.JH05Q-2409 and was going from Tata to Chandil about 02:30 O'clock, when he

reached Patta, Tanker/ Tractor bearing registration No.BR18-9139, which was driven by its driver rashly and negligently came from the opposite side dashed Tata-407 mini truck, which was driven by the claimant Rakesh Dubey, as a result thereof, he sustained multiple injuries including amputation of leg and was admitted to Tata Main Hospital, wherein his fardbeyan was recorded by the police on 25.11.2018, thereafter, he was referred to C.M.C. Vellore and underwent treatment.

4. On the fardbeyan of the informant-injured, who is the claimant in the claim petition, Chandil P.S. Case No.203 of 2008 was registered under Sections 279, 338, 337 and 427 of the Indian Penal Code against the driver of the tanker bearing registration No.BR18-9139. In the very case the Investigation Officer concluded the investigation and filed charge sheet against the driver of the Tanker bearing registration No.BR18-9139, namely, Afroz Alam, son of Khalid.

5. The learned trial Court after hearing the rival submissions of the parties, passed the impugned award fastening the liability upon the claimant himself, who was driving Tata-407 Mini Truck bearing registration No.JH05-2409 and directed the appellant-Oriental Insurance Company Limited, the insurer thereof to pay the compensation amount.

6. Aggrieved from the liability fastened upon the appellant-Oriental Insurance Company Limited, the instant Miscellaneous Appeal has been directed.

7. For disposal of this Miscellaneous Appeal following point of determination is being framed:

“Whether accident in question was caused by the rash and negligent driving of the driver of vehicle tanker/tractor being registration No.BR18-9139 or the accident in question was the result of contributory negligence of the driver of both the vehicle

i.e. Tata-407 Mini Truck bearing registration No.JH05Q-2409, which was driven by the claimant Rakesh Dubey himself and the driver of the tanker/ tractor bearing registration No.BR18-9139.

8. In this claim petition, the petitioner has impleaded the owner of the Tanker/ Tractor bearing registration No.BR18-9139 as opposite party No.1, Insurance company of the Tanker/ Tractor, Reliance General Insurance Company opposite party No.2 and, thereafter, by the order of the Court also impleaded the owner of Tata-407 Mini Truck bearing registration No.JH05Q-2409 as opposite party No.3 and the Oriental Insurance Company, insurer of the Tata Mini Truck as opposite party No.4, who is the appellant herein.

9. The opposite party No.1, who is the owner, in his written statement, stated that the said accident was not caused by his rash and negligent driving of him, rather it was caused by the rash and negligent driving of the claimant himself, who was driving Tata-407 Mini Truck and stated that his Tanker/ Tractor was insured by the opposite party No.2, Reliance General Insurance Company Limited and if any liability is fastened upon him, for the same, opposite party No.2-Insurance Company is liable.

10. On behalf of the opposite party No.2, Reliance General Insurance Company Limited, the written statement was filed and admitted that the said truck bearing registration No.BR18-9139 was insured by him but the said accident was not caused by the rash and negligent driving of the driver of the Tanker/ Tractor rather it was caused by the rash and negligent driving of the vehicle, which was being driven by the claimant himself.

11. On this point of determination on behalf of the claimant in oral evidence examined C.W.-1 claimant-injured himself, who is the eyewitness of the accident. In his examination-in-chief, he has corroborated the

averment made in the claim petition in regard to the accident and in cross-examination, this witness says that the tanker, which was carrying diesel came from the opposite side driven by its driver dashed his vehicle, which was driven by him for which he has also lodged the FIR. There was no negligence on his part in the said accident.

11.1 On behalf of the claimant on this very point of determination filed the FIR- Exhibit-4 and charge-sheet, Exhibit-5.

11.2 From the very perusal of this FIR, which was lodged against the driver of the Tanker/ Tractor bearing registration No.BR18-9139, in this FIR it has been alleged that the driver of the tanker came from the opposite side driving it rashly and negligently and dashed to the Tata-407 Mini Truck, which was being driven by the informant, whereby he sustained grievous injuries and rushed to the hospital. This FIR was registered as Chandil P.S. Case No.203 of 2008 under Sections 279, 337, 338 and 427 of the Indian Penal Code. **The investigating officer after concluding the investigation also filed charge-sheet in Chandil P.S. Case No.203 of 2008 against the driver of the tanker bearing registration No.BR18-9139, namely, Afroz Alam, which is Exhibit-5.**

11.3 These documentary evidences are also corroborated with the oral evidence of claimant, who is the injured eyewitness of the accident.

11.4 To rebut the oral and documentary evidence adduced on behalf of the claimant on this very point of determination **on behalf of the owner and Insurance Company of the tanker, neither oral nor documentary evidence was adduced.** The oral and documentary evidence adduced on behalf of the claimant was not shaken by the opposite party during cross-examination of C.W.-1, Rakesh Dubey, who is the eyewitness of accident.

11.5 As such, it proved that the **accident in question was caused by the negligence on the part of the driver of the offending vehicle Tanker/ Tractor bearing registration No. BR18-9139 and the accident in question was not a result of contributory negligence.**

12. The finding recorded by the learned Tribunal that the accident in question was caused on account of exclusive negligence of the driver of Tata-407 Mini Truck is not based on the oral as well as documentary evidence on record, rather the same is based on conjectures and surmises and the same is found perverse.

13. From the evidence on record, it is found that the accident in question was caused on account of exclusive negligence driving on the part of the driver of Tanker/ Tractor bearing registration No.BR18-9139 and there was no contributory negligence on the part of the driver of the Mini Truck bearing registration No.JH05Q-2409. As such, the Tanker/ Tractor bearing registration No.BR18-9139, which was insured by the Insurance Company/ opposite party No.2 on the date of accident, the liability to pay the compensation is fastened upon opposite party No.2 in the claim petition, who is the respondent No.3 in this Miscellaneous Appeal.

14. In view of above discussion, the finding recorded by the learned Tribunal in regard to fastening the liability upon the Oriental Insurance Company of the vehicle Tata Mini Truck bears infirmity and the same needs interference and to this extent the impugned award passed by the learned Tribunal requires to be set aside and this Miscellaneous Appeal deserves to be allowed.

15. Accordingly, this Miscellaneous Appeal is hereby **allowed** and the **impugned award** passed by the learned Tribunal **is set aside to the extent**

of fastening liability upon the appellant-Oriental Insurance Company Limited to pay the compensation amount, rather the liability to pay the compensation amount is fastened upon the respondent No.3, Reliance Insurance Company Limited, who is the insurer of the offending vehicle bearing registration No.BR18-9139. The amount of compensation, if any, paid by the appellant/ Oriental Insurance Company Limited, the same shall be payable to the appellant by the respondent No.3/ Reliance General Insurance Company. The statutory amount of Rs.25,000/- be refunded to the account of the appellant/ Oriental Insurance Company Limited.

16. Let a copy of this order be communicated to the learned Court concerned through 'FAX'.

(Subhash Chand, J.)

Madhav/- A.F.R.